



Submission to Social Services and Community Select Committee on the *Oranga Tamariki Amendment Bill*

INTRODUCTION

1. Thank you for the opportunity to submit on the Oranga Tamariki Amendment Bill. The Aotearoa New Zealand Association of Social Workers (ANZASW) supports the partial repeal of the subsequent-child provisions, the repeal of Section 66D and amending other technical errors in the Act as proposed.
2. It is important that all sections of the Oranga Tamariki Act 1989 remain fit-for-purpose given its role in informing statutory care and protection practice across Aotearoa New Zealand.
3. We agree with the findings of the Regulatory Impact Statement¹ and aim to expand on aspects of this throughout our submission such as, that principles underlying Section 18B do not align with principles of Te Tiriti o Waitangi, additionally they do not align with social work practice values or code of ethics².
4. Review of use of these provisions in practice has clearly highlighted their limitations and philosophical clash with usual care and protection practice. The anticipated 450 per annum applications which the court would receive in relation to subsequent children has not come to fruition and demonstrates that as defined, it is an unnecessary provision within the Act. However, we do agree that the subsequent-child provision should remain as drafted in clause 6 for those who have convictions for the murder, manslaughter or infanticide of a child or young person given the significantly greater risk associated.
5. We also speak to the service gap identified within the Regulatory Impact Statement in relation to the need to support parents after a child has been removed from their care. This service gap presents an opportunity for preventing removal of subsequent children by providing the right supports at individual, whānau, community and societal levels.
6. We support the repeal of the dataset provision in section 66D given the administrative burden Oranga Tamariki states this creates and the safeguards now in place around accountability of information collection and data sharing which have been legislated or implemented since this section was proposed.
7. We have no specific comments to make on the additional technical correction clauses as proposed in the Bill.

¹ Oranga Tamariki. 2020. Regulatory Impact Statement: Oranga Tamariki Amendment Bill.

<https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Report-and-releases/Cabinet-papers/Subsequent-children-provisions/Regulatory-Impact-Analysis-Subsequent-children.pdf>

² Aotearoa New Zealand Association of Social Workers. 2019. Code of Ethics. <https://www.anzasw.nz/code-of-ethics/>

INCONSISTENCIES WITH TE TIRITI O WAITANGI

8. Section 18B as currently defined in the Act does not align with the principles of Te Tiriti o Waitangi for several reasons:

It contradicts Section 7AA of the Act by presuming risk

9. The Act includes duties to Te Tiriti o Waitangi to (amongst others) reduce disparities for tamariki Māori and rangatahi Māori. However, defining a parent of a subsequent child as someone who has had a child or young person previously removed from their care and therefore presuming subsequent tamariki are at risk has meant that whānau Māori continue to be over-represented for those in which this provision applies. Māori children have a much higher likelihood of being reported to Oranga Tamariki³; of the 19 declarations made for subsequent children since this provision came into force, 13 have been for tamariki Māori⁴.
10. This directly contradicts the principle under section 7AA to reduce disparities for Māori as use of these provisions, as described by Oranga Tamariki “*reduce our ability to work successfully with whānau, and in way that supports these outcomes*”⁵ (that tamariki thrive under the protection of their whānau, hapū and iwi).

It places the burden of proof upon whānau, contradicting Te Tiriti and procedural justice principles

11. Section 7AA of the Act also includes having regard to mana tamaiti (tamariki) and the whakapapa of Māori children and young persons and the whanaungatanga responsibilities of their whānau, hapū, and iwi. Oranga Tamariki describe their practice objectives in outworking this to be ensuring participation of tamariki, whānau, hapū and iwi in decisions at the first opportunity and support, strengthen and assist whānau Māori to care for their tamaiti or tamariki⁶. The subsequent-child provision does not allow for this in practice given decision making and oversight duties are conducted by the court and that the onus to prove tamariki are not at risk is then placed upon whānau, many of whom are likely to have had a previous negative experience with Oranga Tamariki and the courts by the very nature of removal of a child.
12. Power dynamics are a significant challenge in care and protection work; however, this provision amplifies these dynamics as it would be near impossible as a practitioner to develop a constructive and supportive relationship with whānau under this provision. We consider this a clear example of the Crown exerting power over Māori rather than applying Te Tiriti principles of partnership, active protection and tino rangatiratanga for whānau.

³Rouland, B., Vaithianathan, R., Wilson, D., & Putnam-Hornstein, E. (2019). Ethnic Disparities in Childhood Prevalence of Maltreatment: Evidence From a New Zealand Birth Cohort. *American Journal of Public Health*, 109(9), 1255–1257. <https://doi.org/10.2105/ajph.2019.305163>

⁴Oranga Tamariki. 2020. Regulatory Impact Statement: Oranga Tamariki Amendment Bill.

⁵Oranga Tamariki. 2020. Regulatory Impact Statement: Oranga Tamariki Amendment Bill.

⁶Oranga Tamariki (n.d). Practice for working effectively with Māori. <https://practice.orangatamariki.govt.nz/core-practice/working-with-maori/how-to-work-effectively-with-maori/practice-for-working-effectively-with-maori/>

13. Furthermore, the reverse onus of proof breaches principles of procedural justice. The burden should fall on the accuser (i.e., the Crown) not on those accused to prove safety. It is also practically very difficult to prove current parenting competency without having a child in the parents' care.⁷

It diminishes rangatiratanga and family-led decision-making

14. Family-led decision-making, through the Family Group Conference (FGC) process, is a fundamental process of the Aotearoa New Zealand legislation. Section 18A(6) removes the requirement for a FGC to be held and allows for direct referral to Court (an FGC must be held if the Chief Executive applies for a Care or Protection Order). We view this as undermining the intention of the FGC process. A FGC should ideally always be held prior to Court applications being made.
15. Further to this, there is the risk that parents may make long-term care decisions, which at the time may be in the child's best interests, but these have long-lasting impacts on future children. Parents are forever marked as s18B parents and any further children they have would be subject to the assessment process. This does not recognise people's capacity to change. We are concerned the subsequent child provisions have long-term repercussions which could undermine family-led decision-making and rangatiratanga.

LITTLE EVIDENCE OF USE

16. When the Act was amended to include this provision, it was estimated that 450 applications for subsequent children would come to court per year. However, during the four years in which this provision has been enforced only 61 applications have been made and of those, only 19 declarations that a subsequent child is in need of care or protection have resulted. Oranga Tamariki state that most applications did not meet section 18(B) criteria.
17. Additionally, social workers have stated that they tend to utilise other pathways which are more appropriate to ensure the safety of children who may have an older sibling in care (such as section 78 orders). Using section 18B is problematic as often a determination that an older sibling "has no realistic prospect that the child or young person will be returned to the person's care" (s18B(1)(b)) has not been made yet. The requirement to apply to the court for this determination to utilise the section 18B provision adds further trauma for whānau who may have been working with Oranga Tamariki with the expectation that their tamariki may one day be returned to their care.

DOES NOT REFLECT CORE SOCIAL WORK PRACTICE VALUES AND ETHICS

18. Working in this manner is not consistent with social work practice values or code of ethics. Namely, rangatiratanga, manaakitanga and whanaungatanga⁸.
19. As a profession, social workers are committed to rangatiratanga; we advocate for and support self-determination and empowerment of others. Evidence from the UK documented that taking a pre-emptive approach to the removal of children left mothers feeling a significant sense of injustice because they lacked opportunity to demonstrate how they care for their children⁹. Additionally, it erodes a social worker's own sense of rangatiratanga in that even when a social work assessment concludes that there are no care and protection concerns, family court oversight is still required if

⁷ Tompkins, G. C. (2017). The legal and practice implications of the s18A amendment to the Children Young Persons and Their Families Act 1989 (Thesis, Master of Arts). University of Otago. Retrieved from <http://hdl.handle.net/10523/7660>

⁸ ANZASW. 2019. Code of Ethics.

⁹ Broadhurst, K., Mason, M. C., Bedston, S., Alrouh, B., Morriss, L., McQuarrie, M. T., ... Kershaw, M. S. (2017). Vulnerable birth mothers and recurrent care proceedings. University of Lancaster, 24. https://doi.org/10.1007/978-1-61779-845-0_11

tamariki are determined by the court to be 'subsequent children.' This undermines professional decision making and skills unique to the social work profession, for which social workers have undertaken years of tertiary study and obtained professional registration.

20. Use of this provision does not allow for manaakitanga in practice or decision making. It works to remove the mana of whānau and does not allow for a kind and compassionate approach to working differently with whānau of subsequent children, considering their current situation and significant changes which may have occurred in their social circumstances since removal of their previous child. For some whānau, removal of a child creates a catalyst for addressing some of the circumstances under which their child was removed such as substance misuse, violent relationships, and mental health¹⁰.
21. Whanaungatanga, practiced by strengthening reciprocal mana-enhancing relationships and fostering a sense of belonging and inclusion is an important ethical practice principle for social workers. However, this provision creates a sense of fear for whānau in seeking support for subsequent children¹¹ and creates a significant barrier for engagement between a social worker and whānau, again reflecting a power imbalance in which reciprocity of relationship and working towards a mutual understanding around safety of tamariki is near impossible to achieve.

CONTINUING NEED FOR PROVISION IN RELATION TO RELEVANT CONVICTIONS

22. We do support retaining the provision which previously read as s18B(1)(a). Given the gravity of risk associated with the convictions of murder or manslaughter of a child or infanticide it is appropriate for stricter oversight of parents who have subsequent children and whom this section applies. Young children remain most at risk of hospitalisation of serious assaults¹², therefore, all efforts to protect children for whom their carer has already offended in this manner should be taken.

ADDRESSING THE SERVICE GAP TO REDUCE RISK FOR SUBSEQUENT CHILDREN

23. There is currently a missed opportunity to support whānau who experience the removal of a child to address the underlying social factors which led to removal, both to improve outcomes for the tamariki and reduce the likelihood of subsequent children being placed outside of their care. Current interventions tend to focus on the skills of mothers, however a whānau-centred approach is strongly supported by evidence to address the cycle of recurrent removal of tamariki¹³.
24. Accounts from birth mothers suggests that removal of a child deepens adversity and compounds existing psychological and social stressors. So much so, that it is proposed that for some women "child removal was firmly the gateway to further adversities"¹⁴. Child Matters states that removal of a previous child is a risk factor for abuse of subsequent children¹⁵, which reinforces this view. However, in the Aotearoa New Zealand context, parents lose access to support once the plan for the child becomes a permanent placement¹⁶ therefore, without support to change their circumstances, whānau

¹⁰ Allen + Clarke. (2020). Subsequent children evidence brief. Wellington, New Zealand: Oranga Tamariki—Ministry for Children. <https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Research/Latest-research/Subsequent-children/Subsequent-Children-evidence-brief.pdf>

¹¹ Allen + Clarke. (2020).

¹² Child Poverty Monitor. (2021) Child Poverty Monitor 2021 Technical Report. https://nzchildren.co.nz/#Deaths_assault

¹³ Bedston, S., Philip, G., Youansamouth, L., Clifton, J., Broadhurst, K., Brandon, M., & Hu, Y. (2019). Linked lives: Gender, family relations and recurrent care proceedings in England. Children and Youth Services Review, 105(June), 104392. <https://doi.org/10.1016/j.childyouth.2019.104392>

¹⁴ Broadhurst, K. and Mason, C. (2019) Child removal as the gateway to further adversity: Birth mother accounts of the immediate and enduring collateral consequences of child removal. Qualitative Social Work, 19(1), (15-37). <https://journals.sagepub.com/doi/full/10.1177/1473325019893412>

¹⁵ Child Matters (n.d) Risk Factors for Child Abuse. <https://www.childmatters.org.nz/insights/risk-factors/>

¹⁶ Oranga Tamariki. 2020. Regulatory Impact Statement: Oranga Tamariki Amendment Bill.

continue to replicate an environment where risk to subsequent children remains and adversity deepens. Aotearoa New Zealand research has highlighted factors (at whānau, practitioner, organisational, and systemic levels) which prevent (and contribute to) the removal of children.¹⁷ We strongly support greater emphasis on the prevention of removal based on evidence-based findings.

25. Following the removal of a child, whānau require significant individual and family support with a range of factors related to both the circumstances that led to removal (such as parenting approaches, substance misuse, mental health, and family violence) and with addressing the trauma, grief and loss associated with removal of a child¹⁸. Without assistance to process this grief and loss, mothers self-report the tendency to revert to patterns of behaviour which contributed to the removal as a coping mechanism such as heavy substance abuse and involvement with an abusive partner¹⁹. However, grief and loss work is a much-overlooked task of care and protection intervention.
26. There are growing calls for the use of an inequalities perspective within Aotearoa New Zealand.²⁰ An inequalities perspective considers the association between poverty and risk of child abuse and maltreatment. Children who live in high deprivation areas are more likely to have contact with the child protection system. Research has also considered the impact on other social determinants.²¹ We are clear that support must go beyond the individual and whānau approaches (such as parenting programmes and counselling) to prevent recurrent removal of children by addressing the impacts of poverty, housing instability, food insecurity and low parental educational attainment at a community and population level to make meaningful differences for whānau²².
27. Use of the socioecological model is helpful to frame this argument as it can identify community and societal risk and protective factors²³ alongside individual, interpersonal and whānau factors which are routinely carefully considered during care and protection work.
28. We emphasise the need for cross-sector collaboration in addressing the determinants of child abuse drawing from protective factors identified in Keddell's (2020) work as examples of policy levers which live in other sectors:
 - Building neighbourhood capital and cohesion by ensuring access to trusted and culturally safe and relevant health, social and educational services locally
 - Economic policies which ensure living wages are paid, reduce the burden of child-related expenses (such as current ECE subsidy), provide for access to affordable housing and ensure adequate benefit levels for families with young children on welfare support to reduce material hardship and parental stress.

REPEAL OF SECTION 66D

29. We support the repeal of section 66D (clause 7 of the Bill) provided that other provisions in section 66 remain, as in practice these provisions provide greater protection for tamariki by allowing for improved

¹⁷ Keddell, E., Fitzmaurice, L., & Cleaver, K. (2021). The prevention project: Supporting whānau and reducing baby removals (Project Report). Retrieved from <http://hdl.handle.net/10523/10788>; Keddell, E., Cleaver, K., & Fitzmaurice, L. (2022). Experiences of baby removal prevention: A collective case study of mothers and community-based workers. *Qualitative Social Work*. <https://doi.org/10.1177/14733250211058178>

¹⁸ Broadhurst et al, 2017

¹⁹ Broadhurst & Mason, 2019.

²⁰ Keddell, E. (2020). The case for an inequalities perspective in child protection. *Policy Quarterly*, 16(1), 36-38.

²¹ Hunter AA, Flores G. (2021). Social determinants of health and child maltreatment: a systematic review. *Pediatr Res*. Jan;89(2):269-274. <https://pubmed.ncbi.nlm.nih.gov/32977325/>

²² Hunter and Flores (2021); Keddell (2020).

²³ Austin AE, Lesak AM, Shanahan ME. Risk and protective factors for child maltreatment: A review. *Curr Epidemiol Rep*. 2020 Oct 7;7(4):334-342. <https://pubmed.ncbi.nlm.nih.gov/34141519/>

information sharing between agencies within the parameters of the Act. These provisions have been reported as resulting in improved practice since they came into effect²⁴.

30. The repeal of section 66D does not appear to impact upon this intent, particularly given there are now other legislative mechanisms in place to achieve accountability of information sharing and data collection since this section was drafted.

CONCLUSION

31. ANZASW fully supports the partial repeal of section 18B, repeal of section 66D and technical corrections as proposed in the Oranga Tamariki Amendment Bill. We have shown the current legislation is not consistent with the principles of Te Tiriti o Waitangi when applied in practice, nor the social work profession's own values and code of ethics.
32. We do agree that there is significant service gap, as identified by Oranga Tamariki in their Regulatory Impact Statement, in relation to the lack of support whānau receive following the removal of children. This is not within scope of this legislative change, however, warrants specific consideration under repeal of section 18B given the unintended consequences which could result if whānau who require additional support to care and nurture for their tamariki and have been previously involved with care and protection services are not adequately identified and supported.
33. We thank you for providing the opportunity to submit on this important issue and would appreciate the opportunity to be heard by Select Committee.

ABOUT ANZASW

The Aotearoa New Zealand Association of Social Workers (ANZASW) is the professional association for social work in Aotearoa New Zealand. We have over 3,600 members who work throughout the community in both statutory social work and community social work settings. We advocate on behalf of members for social change and justice.

Definition of social work

Social work is a practice-based profession and an academic discipline that promotes social change and development, social cohesion, and the empowerment and liberation of people. Principles of social justice, human rights, collective responsibility, and respect for diversities are central to social work. Underpinned by theories of social work, social sciences, humanities and indigenous knowledges, social work engages people and structures to address life challenges and enhance wellbeing.²⁵

Social work in Aotearoa New Zealand

Social workers in Aotearoa are required to be registered with the Social Workers Registration Board. Social workers are registered under the Social Workers Registration Act 2003 and are not included in the Health Practitioners Competence Assurance Act 2003.

²⁴ Oranga Tamariki. 2021. Evaluating the Voluntary Information Sharing Provisions of the Oranga Tamariki Act 1989.

²⁵ Global Definition of Social Work - International Federation of Social Workers and International Association of Schools of Social Work

Contact details

If you have any questions or require any clarification about this submission, please contact:

Braden Clark

Kaiwhakahaere Chief Executive

027 349 0190

bradenc@anzasw.nz

Bronwyn Larsen

Senior Policy Analyst

bronwynl@anzasw.nz